

THE GEORGE WASHINGTON UNIVERSITY
Washington, D. C.

MINUTES OF THE REGULAR MEETING OF
THE FACULTY SENATE HELD ON JANUARY
18, 1980, IN THE FACULTY CONFERENCE
ROOM, SIXTH FLOOR, LISNER HALL

1 The meeting was called to order at 2:16 p.m., by the President.

Present: President Elliott, Provost Bright, Registrar Gebhardtsbauer, Parliamentarian Cheh, Birnbaum, Chitwood, Fox, Gallagher, Griffith, Hill, Jones, Kelly, Loeser, Packer, Park, Pierpont, Reesing, Robinson, Schiff, Toridis, Walker, Wood, and Ziolkowski

Absent: Amling, Barron, Chandler, Claeysens, Ginsburg, Gordon, Heddesheimer, Liebowitz, Linkowski, Linton, Reiss, Sapin, Shotel, Solomon, and Steiner

2 The minutes of the regular meeting of December 14, 1979, were approved as distributed.

3 Professor Griffith, on behalf of the Professional Ethics and Academic Freedom Committee, moved the adoption of Resolution 79/8, "A Resolution Concerning the Decision to Join the Yeshiva Brief," and the motion was seconded. Professor Griffith said that he would like to comment briefly with respect to the resolution and the report but that first he wished to apologize to Professor Maurer for the typographical error in the spelling of his name in the last paragraph of Page 2 of the Report. Professor Griffith said that the Professional Ethics and Academic Freedom Committee did not undertake a further study of the action of the Executive Committee in giving advice to the President in this matter because the Committee felt that the Faculty Senate had decided by its vote how it felt about that action, and that wasn't the purpose, insofar as the Committee understood it, for which the Faculty Senate referred it for study. Secondly, Professor Griffith said that the question had been raised as to whether the consequences of the decision to join the Yeshiva Brief referred to in the Committee Report meant the "legal" consequences of the University's appearing as a signatory on the Brief. He said he wished to make it clear that the Committee was not referring only to "legal" consequences but mainly to "political" consequences, both internally and externally, within the University, i.e., the impact upon the University community and, particularly, the impact on the faculty and its role in the governance of the University. Lastly, Professor Griffith said that it was the conclusion of the Committee that the President should at least attempt to clarify to the faculty the action which had taken place and why the consultation had taken place in the way that it had, and perhaps to reassure the faculty that the Yeshiva action was not something that indicated the administration's desire to seriously change the position of the faculty in its professional role in the University with very slight input from the faculty.

Professor Jones said that the thrust of the resolution had taken a different direction from the kind of discussion that he had hoped the Senate would eventually give to the Yeshiva matter. He said that his concern was that the Executive Committee, too hastily in his opinion, had encouraged the President to involve the University in this case and while the Senate did go on record as nonconcurring with the Executive Committee's advice and the speed with which it was given, he was interested in the larger question as to the opinion of the faculty about rights to organize in the event there should be a radical change in the relationship between the faculty and administration in the governance of the University. He said that he was interested in hearing from his colleagues about the pros and cons of the issues involved in the Yeshiva Brief and not just about the question of whether in the future the President would recognize what the role of the faculty should be in decisions of this sort. Professor Jones said that he would not like to see the faculty give up prerogatives which it might later wish to use in seeking different modes of organization and relationships with the University administration. But since those issues were not addressed in the Report, Professor Jones said that he did not think the Senate could carry on a meaningful debate; however, he urged the faculty to think about the issues that were raised in the Yeshiva Brief.

Professor Griffith responded that his Committee's view of what it ought to do was very different from that of Professor Jones. He said that the Committee made an effort to come to grips with the legal issues which were posed in the Brief and the appropriateness of the position taken in the Brief as to whether or not the role of the faculty in the governance of this University could appropriately be said to fall within the potential exemption carved out by the NRLB for universities in which the governance is "genuinely collegial"--which, in a sense, was the fundamental issue. The Committee concluded that if that particular issue was to be fully assessed, it was the Committee's recommendation that the Faculty Senate establish a Special Commission to make a broad study of that issue with the help of expert guidance on the legal technicalities which were involved because the Professional Ethics and Academic Freedom Committee, with its press of other duties, simply could not undertake that kind of study. Professor Griffith said that he wished to apologize to the Senate on behalf of the Committee because he understood that its report and resolution were to some extent unsatisfactory for a full debate on the issues involved in this particular case, but that the Committee felt that this was the best it could do to try to deal with the matter as referred to it by the Senate. No other comments were made. The question was called and Resolution 79/8 was adopted. (Resolution attached.)

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No Resolutions were introduced under Introduction of Resolutions.

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(a) Professor Wood, on behalf of the Executive Committee, moved the nomination of the following people for election to the Nominating Committee for the new Executive Committee (1980-81 Session): Gilbert J. Ginsburg (Law), Temporary Chairman; Frederick Amling (SGBA); Richard A. Kenney (Medical); Martha N. Rashid (Education); Lilien F. Robinson (Columbian College); Stefan O. Schiff (Columbian College); and Theodore G. Toridis (Engineering). The motion was seconded. There were no nominations from the floor, and the entire slate was elected unanimously.

(b) Professor Griffith, Chairman of the Professional Ethics and Academic

Freedom Committee, made an interim report on the status of the resolutions pertaining to non-tenure track faculty members at the request of the Executive Committee. Professor Griffith said that, if the Senate would recall, the preceding PEAF Committee was working on three resolutions pertaining to the issue of appointments of full-time faculty without eligibility of tenure, and that two of the resolutions had been remanded by the Executive Committee over Committee protests, and the third was withdrawn at the Senate meeting of May 4, 1979, by the PEAF Committee because it felt very strongly that the three resolutions ought to be considered as a set. Professor Griffith said that his Committee distributed an invitation to the faculty to supply the Committee with its viewpoints and arguments on the issues. He said that he had received approximately 40 replies and he wished to thank those faculty members who took the time and effort to respond. Professor Griffith said that after considering the responses from the faculty and the Committee's own study, it was apparent that there was no consensus in the faculty as to how the issues of appointment of non-tenure track faculty should be handled, and that the Committee, as it represents the faculty, was, itself, to some extent divided about this matter. Professor Griffith said that the Committee had been working very diligently and had met on a weekly basis on this matter and expects to have more meetings before the Committee's mandate expires in March. He said he would hope that the Committee could arrive at some consensus about what to propose to the Senate in terms of principles and strategy and that the Committee might be ready to present a proposal to the Senate at the February or March meeting. Professor Griffith said that the Committee had received very helpful and extensive cooperation from the Provost's Office in its study of this matter and he wished to extend the appreciation of his Committee for this cooperation.

(c) Professor Wood, Chairman of the Executive Committee, advised the Senate that the Annual Reports of the Senate Standing Committees were due in February. He reported that Professor Hill, at the last Executive Committee meeting, suggested that the Executive Committee meet with the Chairmen of the Senate Committees from time-to-time during the Senate session on a systematic basis, and Professor Wood said that he thought that suggestion was a good one and should be considered in the new session. Professor Wood said that he proposed to the Executive Committee an amendment to the Faculty Organization Plan to establish a minimum and a maximum number of members on the Nominating Committee for the Executive Committee, but that the Executive Committee tabled that suggestion. Since there weren't a great flood of nominations from the floor today, he said he thought the Executive Committee's decision was wise.

Professor Wood reported that the Board of Trustees in its meeting Thursday, January 17, 1980, adopted Senate Resolution (79/2), "A Resolution to Establish the Rank of University Professor," which includes the process of nominating a University Professor, and Senate Resolution (79/4), "A Resolution to Amend the Faculty Code as to Grievance Procedure," which states that "If the Hearing Committee finds that the complaint is based upon issues, evidence or allegations that have been previously heard and decided, or which could have been presented in a previous hearing, the Hearing Committee, in its discretion, may dismiss the complaint."

Under Brief Statements, President Elliott said that he wished to respond to the resolution on the Yeshiva case informally. He said that, as President, he was happy to accept and approve the resolution passed by the Senate today; and that he would like to express the hope, and hoped that he was speaking for faculty, as well

as administrators, that our own institutional procedures would not become so cumbersome either now or in the future, as to prevent the University or various parts of the University from expressing its institutional position on matters of importance to the institution. He said that he was not at all pleading in this case that the Yeshiva item was one of those, but it was not difficult for a university, particularly a multi-purpose university, to get bogged down in its own procedures and he hoped that both faculty and administration would be attentive to that aspect.

Professor Jones said he wished to remind the faculty of all schools of the Winter Convocation on Washington's Birthday which was on February 18th this year. In order to make the attendance of the graduation more convenient, he said that the service would be held at one o'clock in the afternoon and that there would be receptions for the various schools in the Marvin Center following the ceremony. Professor Jones said that the speaker would be Mr. Carl T. Rowan, distinguished columnist and commentator, and that an honorary degree would be given to Mr. Richard W. Dirksen, precentor of the Washington Cathedral.

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The meeting was adjourned at 2:47 p.m., upon motion made and seconded.



Robert Gebhardtsbauer
Secretary

A RESOLUTION CONCERNING THE DECISION TO JOIN THE YESHIVA BRIEF (79/8)

WHEREAS, according to the Faculty Code, the faculty shares with the officers of the administration "the responsibility for the effective operation of the University as a whole", and

WHEREAS, the consequences of a decision to join the group of private universities filing a brief Amici Curiae in the Yeshiva case were complex, difficult to discern, yet very probably might have serious impact on the present and future role of the faculty in the governance of this University, and

WHEREAS, the decision to join the brief appears to have been made with only superficial and hasty consultation with the faculty; now, therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY
THAT:

The Faculty Senate urges the President, as an aftermath of the Yeshiva decision, to reaffirm recognition of the right of the faculty to be consulted in full and timely fashion in decisions which bear heavily upon the faculty's professional role in the governance of the University.

Committee on Professional Ethics and Academic Freedom
December 28, 1979

Adopted January 18, 1980

THE GEORGE WASHINGTON UNIVERSITY
Washington, D. C.

The Faculty Senate

January 7, 1980

The Faculty Senate will meet on Friday, January 18, 1980, at 2:10 p.m., in the Faculty Conference Room on the Sixth Floor of Lisner Hall.

AGENDA

1. Call to order
2. Minutes of the regular meeting of December 14, 1979
3. Resolutions:
A RESOLUTION CONCERNING THE DECISION TO JOIN THE YESHIVA BRIEF (79/8) with accompanying Report; Professor William B. Griffith, Chairman, Professional Ethics and Academic Freedom Committee (resolution and report attached)
4. Introduction of Resolutions
5. General Business:
 - (a) Nomination for election of the Nominating Committee for the Executive Committee for the 1980-81 Session: Gilbert J. Ginsburg (Law), Temporary Chairman; Frederick Amling (SGBA); Richard A. Kenney (Medical); Martha N. Rashid (Education); Lilien F. Robinson (Columbian College); Stefan O. Schiff (Columbian College); and Theodore G. Toridis (Engineering)
 - (b) Interim Report of the Professional Ethics and Academic Freedom Committee on the status of resolutions pertaining to non-tenure track faculty members: Professor William B. Griffith, Chairman
 - (c) Report of the Executive Committee: Professor Reuben E. Wood, Chairman
6. Brief Statements
7. Adjournment



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Committee on Professional Ethics and Academic Freedom
December 28, 1979

Report to the Faculty Senate

by

December 27, 1979

Committee on Professional Ethics and Academic Freedom

I. INTRODUCTION AND SUMMARY:

In the Senate meeting of September 14, 1979, a motion was approved to refer "the Yeshiva Brief and all attendant papers" to an appropriate Senate Committee "so that the Senate could make a statement as to the faculty position on this case." By letter dated October 9 the Executive Committee referred the matter to the Committee on Professional Ethics and Academic Freedom "for study and a report".

This Committee had some difficulty interpreting just what it was being asked to do. Although the Senate had refused to concur with the advice by its Executive Committee that the University join the brief, the Brief had already been filed, and by the time the issue reached the Committee, the Supreme Court had already heard oral argument. Presumably a decision should be forthcoming sometime during the present Court term, which would alter the present ambiguous legal situation and make further efforts to untangle it somewhat pointless.

The Committee came to the conclusion that the principal issue which might profitably be considered by the Senate was the process of decision-making which resulted in the University's joining the brief. The bulk of the report which follows and the Resolution which arises from it therefore deal in the main with this process and only secondarily with the Yeshiva case itself.

In brief summary, the Committee found that the legal and institutional issues raised by the Yeshiva case were extremely complex and multifarious, with possible consequences of the utmost seriousness for the University and for the faculty here (as well as elsewhere), and that the hastiness and superficiality of the consultation process in which the decision to join the brief was made was not sufficiently responsive to the faculty's strong interest in the decision and its presumptive right to develop a carefully considered recommendation to the administration.

II. THE TIME-FRAME OF THE DECISION TO JOIN THE BRIEF

According to the documents made available to the faculty, the formal involvement of G.W.U. with the Supreme Court appeal in the case of NLRB and Yeshiva U. Faculty Association v. Yeshiva University began with a letter dated June 21, 1979, from the University's legal counsel to President Elliott. On July 3rd the Executive Committee of the Senate met with the President at his request to discuss how to respond to the invitation to join the brief. Shortly after the meeting the President advised Chairman Wood that a decision on whether to proceed had to be made by July 6. On July 4th, after a telephone caucus among four of its five members, the Executive Committee advised the President to join the brief on the side of Yeshiva University. Although not in the records before us, presumably the President's decision was made within the next two days.

Thus, so far as the records before us show, the decision would appear to have been considered by the administration for a period of approximately two weeks, and by the faculty representatives consulted for approximately two days.

This speed of decision needs to be considered in the light of the complexity of the issues involved.

III. COMPLEXITY OF THE ISSUES/UNCERTAINTY OF THE CONSEQUENCES:

Members of the Senate who reviewed the documents made available to us on the Yeshiva case for the Faculty Assembly and Senate meetings in September will be familiar with the basic issues. All that will be attempted here is to highlight some issues and fill in some background to clarify the nature of the questions posed when the University and the Senate Executive Committee were confronted with the request to join the group of universities allied with Yeshiva U. against the NLRB and the Yeshiva Faculty Association.

The effort to unionize the faculty at Yeshiva U. had been underway since at least the fall of 1974, when the Faculty Association filed a petition with the NLRB for certification of a bargaining unit. The administration at Yeshiva had constantly opposed this effort, and the litigation arose when the NLRB asked the Second Circuit Court of Appeals to enforce its order to Yeshiva to bargain with the union.

The NLRB has been involved in certifying faculty bargaining units only since 1971. Mostly over the opposition of various university administrations, it has since repeatedly held that a given group of faculty members were "professional employees" and neither "supervisory" nor "managerial" within the meaning of those terms for coverage under the National Labor Relations Act. However, while continuing to decide petitions on a case-by-case basis, the NLRB admitted the difficulty of accomodating the NLRA to the university structure because of the concept of collegial governance, and indicated that, where "a genuine system of collegiality" existed, it might decline to assert jurisdiction.

Hence, leaving to one side a whole host of legal issues which need not directly concern us here, from our standpoint the basic issue was the attempt of the Yeshiva administration and other private universities to carve out a domain where, in the face of increasing resort to unionization by faculties in other institutions, the faculty of their universities would be forced to forego any assistance by the NLRB and obliged to escape any correlative constraints in negotiating status, role and sharing of power with university administrations.

It seems obvious that deciding the desirability of allying G.W.U. with this effort posed a number of very knotty problems. Professor Hill in his dissent and Professor Mauer in his remarks to the Faculty Assembly in September raised the important issue of fairness and responsibility to colleagues in other institutions who would be affected by the outcome of the suit, but we leave that aside here to concentrate on the local situation. Was it reasonable to ask faculty representatives to decide so hastily whether the faculty's share in governance of this institution is so fully satisfactory that the alternative of union bargaining should be made legally difficult if not impossible? And even if presently satisfactory, that the faculty's governance role is not merely conceded de facto currently by an administration but is securely held de jure against possible intrusion by different administrators, or in a changing economic and political climate?

On the other side of the coin is the difficulty of estimating the impact of NLRB jurisdiction should there be an effort in the future to unionize faculty at G.W. Who would not wish to consult expert legal counsel to determine the possible benefits of protection from unfair labor practices under NLRA? And as the briefs in the Yeshiva case clearly show, even labor lawyers can only speculate as to how, over time, the NLRB might or might not accommodate its industrial precedents to the considerably different university situation, where faculty normally play a role somewhat unusual even for professionals.

In short, who would wish to answer such questions without a substantial, thoughtful review of our present situation, together with expert and broad consultation on the best future course, not just for the faculty, but for the university as a whole?

In the Committee's view, such a decision ought to have been asked for only if urgently required in the situation. To this question we now turn.

IV. WAS A QUICK DECISION URGENTLY REQUIRED?

As far as the record before us shows, the pressure to decide quickly came entirely from the deadlines set by Yeshiva U. Its legal counsel appears to have begun the search for Amici late in the day but wished to get a brief filed before the Supreme Court's October term, and it apparently abruptly moved up the deadline after deliberations here began. What did G.W.U. stand to gain by submitting to this pressure to decide, and what did it stand to lose if it declined to answer in such a brief time frame?

Here the Committee was frankly hobbled in its efforts to clarify the situation by the absence of any explicit explanation by President Elliott of the decisions taken by the university administration, first to give a response at all after the time for consideration had been drastically shortened, and secondly, to join to the brief, on the side of Yeshiva U., the name of this university despite the obvious possibility of a severely divisive effect on the faculty. The President was absent and hence unavailable for questions at both the Assembly and the Senate meetings where the Yeshiva matter was discussed, the Provost declined to speak on behalf of the administration, and no written explanation or rationale was ever offered. If there were strong reasons for rushing to add G.W.'s weight to one side in this complicated and portentous legal struggle, they have not been made available to the faculty. And this flies in the face of the obvious fact that the outcome of the suit bears most heavily on the professional role and standing of the faculty of this University, since it will presumably fix a legal interpretation of the faculty's "managerial role" in a "mature" university.

V. CONCLUSION:

In conclusion, the Committee on Professional Ethics and Academic Freedom wishes to stress that it is not recommending to the Senate that it take a position on the central issue posed by the Yeshiva case, namely, whether the faculty at this (and like) universities ought, or ought not, be properly excluded from coverage under the National Labor Relations Act as

"supervisors" or "managers". That issue is far too complicated for the Committee, the Senate, or the faculty as a whole to attempt to decide unless it is urgently required and sufficient time to prepare a position is available.

Rather, what the Committee recommends to the Senate is a resolution (attached) which reflects our judgment that, in a matter of utmost importance to the faculty, the university's decision process did not reflect an effort to inform and consult with the faculty or its representatives commensurate with the difficulty and significance of the issues at stake. The Senate is urged to request from the President some clarification of what we argue was a significant breakdown in the consultative process, and a reaffirmation of his commitment to the reality and not merely the formality of a faculty role in the "effective operation of the University as a whole".

ACKNOWLEDGEMENTS: The Committee, and particularly the preparer of this report, wish to acknowledge reliance on a number of helpful sources in addition to those made available to the Senate, including the helpful analysis of the Amici Brief made to the Executive Committee and myself by Professor Ginsburg; an article helpfully furnished to the Committee by Professor Starrs, BETHEL: "Private University Professors and NLRB v. Yeshiva" 44 Missouri Law Review 427 (1979); Brief of AAUP, Amicus Curiae, in this case; and TICE, ed., Faculty Power: Collective Bargaining on Campus (Ann Arbor, Michigan, 1972).

For the Committee:

William B. Griffith, Chairman

Professional Ethics and Academic Freedom Committee

Members of the Committee

Joseph Aschheim, Economics
 Paul A. Crafton, Engineering Administration
 Joseph V. Foa, CMEE
 Michael G. Gallagher, Accounting
 Paula Kaiser, (Emeritus)
 Benjamin Nimer, Political Science
 Mark M. Platt, Neurology
 Sam Rothman, Engineering Administration
 Tomas Jose Silber, Child Health
 Chariklia Speigel, Medicine
 James E. Starrs, Law
 Walter Stein, Health Care Sciences
 Phyllis L. Stewart, Sociology
 ex officio:
Calvin D. Linton, Dean, Columbian College
 of Arts and Sciences